

FOREIGN POLICY ASSOCIATION

Information Service

VOL. III No. 17

OCTOBER 26, 1927

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Published bi-weekly by the Research Department of the FOREIGN POLICY ASSOCIATION, 18 East 41st St., New York, N. Y.
JAMES G. McDONALD, *Chairman*; Subscription Rates: \$5.00 per year; to F. P. A. Members, \$3.00; Single Copies, 25c.

The Franco-American Tariff Dispute

THE wide ramifications of the Franco-American tariff issue have become increasingly evident during the course of the preliminary negotiations for a commercial treaty. Public discussion in both Europe and the United States has carried the question beyond the limitations which the two governments have sought to impose in the course of their diplomatic exchanges.

Despite the fact that the French and American governments have sought to confine further conversations to the technical aspects of the problem, an important section of the European press is continuing its discussion of the broad economic implications of the high tariff. Many European economists, rightly or wrongly, are urging the point that if the war debts and private American investments are to be repaid, European goods must be allowed to enter the United States free from excessive restrictions. They are also citing the International Banker's Manifesto, and the conclusions of the International Chamber of Commerce and the World Economic Conference in defense of moderate tariffs. In the United States these

same authorities are being quoted to prove the unsoundness of discriminatory duties and the benefits of equality of treatment. But American attention has also been turned to the Fordney-McCumber Act, with the result that its usefulness as a permanent tariff has been called in question by a leading protectionist newspaper and the effectiveness of the flexible provisions has been widely debated.

As a consequence of this discussion many questions are being asked with regard to the history of French and American commercial policy: What is the theory of the double schedule "bargaining" tariff system employed by France? To what extent has France discriminated against other countries? Has the United States ever resorted to discrimination? Has the United States concluded commercial treaties on the basis of reciprocity? How often has the United States used the "flexible" provisions of the Fordney Act to raise or lower rates fixed by Congress? Has the United States resorted to Section 317 of the Fordney Act authorizing retaliation in case of unfair discrimination against American products?

This report provides a brief review of American and European commercial policy and a survey of trade relations between the United States and France as a background to the present situation.

EUROPEAN COMMERCIAL POLICY BEFORE 1914

Modern European commercial policy begins with the Cobden treaty of 1860 between England and France. In this treaty England accepted the principle of free trade, while France agreed to remove her import prohibitions and to reduce many of her duties on English goods. Both governments agreed that they would accord to each other whatever reductions in duties each might accord to a third state—the principle of most-favored-nation treatment.

A second step toward removing discriminations in European commerce was taken following the defeat of France by Germany in the war of 1870. At the request of France Article 11 was inserted into the Treaty of Frankfurt of 1871 in which France and Germany agreed that they would accord each other most-favored-nation treatment in so far as favors accorded by either state to England, Belgium, Holland, Switzerland, Austria and Russia were concerned. France could grant special favors to her Spanish and Italian neighbors; but as far as her best customers, England, Germany and Belgium were concerned, all had to be treated alike.

While before 1892 France followed a single tariff schedule, it frequently made reductions through the signature of a commercial treaty. The duties thus secured were called conventional duties. Once such duties were fixed they could not be changed during the life of the treaty, despite the fact that economic conditions might radically change. In the end the system proved irksome to the French parliament and in 1892 it enacted a new law which, as amended in 1910 and later years, remains in force at the present time.* This act abandoned the old conventional system in favor of the so-called

maximum-minimum system. The maximum rates applied to all countries not having a commercial agreement with France; the minimum schedule (about 25 per cent lower than the maximum) to countries granting concessions to France. Both schedules could be raised or lowered by the French parliament at any time. In other words, the system was "autonomous." According to a report to the French Senate, "The co-existence of the two tariffs implies the expectation and the desire to enter into tariff agreements. It stimulates them, it gives to foreign nations a picture of the concessions which can be granted them. . ." But it was agreed that "the establishment of the minimum tariff is designed to rule out any agreement with a fixed term."*

THE SYSTEM OF TARIFF BARGAINING

The system of tariff bargaining, whether through conventional tariffs or maximum-minimum duties, was followed by Spain, Norway, Germany, Austria-Hungary, Bulgaria, Greece, Italy, Portugal, Rumania, Sweden and Switzerland. Despite the establishment of the double tariff system, discriminations between various countries were not as widespread as might have been supposed, simply because of the existence of commercial agreements containing the unconditional most-favored-nation clause, which automatically extended a concession made by one state to all of the other treaty-states. Out of the sixty-two commercial agreements signed by France before 1914, thirty-five provided for most-favored-nation treatment.

But when these agreements expired, many difficulties arose. Bargaining took place in which each government attempted to secure a reduction in duties. To force the reductions one state would subject the imports from the other state to excessive duties, which usually were two or three times the height of the duty which had been fixed in the previous agreement. This occasionally led to tariff wars in which the two states piled high duties on top of each other, with

*Law of January 11, 1892. Article I declared that the "minimum tariff could be applied to the goods originating in countries which will grant French goods corresponding advantages and which will apply to them their lowest tariffs." *Bulletin des Lois de la Republique Francaise*, Vol. 44, p. 33.

*Quoted in *Reciprocity and Commercial Treaties*, 1919, United States Tariff Commission, p. 492.

devastating results to trade. Between 1892 and 1894, five such tariff wars occurred in Europe. At the end of a tariff war between France and Italy, which began in 1888 and lasted for ten years, Italian exports to France declined 57 per cent while French exports to Italy had declined 50 per cent.

WORLD WAR ALTERS COMMERCIAL RELATIONS

With the outbreak of the World War, the commercial situation radically changed. To supply abnormal needs, each of the belligerent countries organized new industries which under conditions of free exchange could not have withstood foreign competition. At an economic conference held in Paris in 1916, the Allied governments decided to deny Germany most-favored-nation treatment after the World War, and to apply other measures to prevent her industrial recovery.

The proposal to establish an economic boycott against Germany was not entirely realized after the war, partly because of President Wilson and his fourteen points. One of these points provided for "the removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to a peace and associating themselves for its maintenance." President Wilson did not mean to suggest that some restriction upon the height of tariffs should be imposed, but merely that "whatever tariff any nation might deem necessary for its own economic service, be that tariff high or low, it should apply equally to all foreign nations; in other words, that there should be no discrimination against some nations that did not apply to others."*

At the Paris Peace Conference the American Delegation drafted a proposal whereby all preferences and discriminations in colonial as well as national tariffs should be forbidden. The adoption of this proposal would have made illegal the British system of Imperial Preference, and the American tariff régime in the Philippines. Realizing the practical impossibility of achieving this end, the American advisers proposed that

existing discriminations and preferences should not be affected.*

Despite this important qualification, the American proposal was not seriously considered. An early draft of the League of Nations Covenant, did, however, prohibit discriminations between states in fiscal and economic matters. But this provision was gradually thinned out and Article 23 of the Covenant finally provided for the "equitable" (and not equal) treatment of commerce. According to the French interpretation this term authorizes differential treatment and special reciprocity agreements.

By the Treaty of Versailles Germany was obliged to grant the Allies most-favored-nation treatment for a period of five years and longer, if so directed by the Council of the League of Nations. Similar provisions applied to other defeated powers. The treaty also provided that for a period of three years Germany could not increase duties on certain imports from Allied and Associated States, including agricultural products, wines, vegetable oils and artificial silk, over the duties in force in 1914.** Moreover, for a period of five years, Germany was obliged to admit products from Alsace-Lorraine free from duty.

By means of these provisions the Allies protected themselves during a transition period against German competition while they secured for themselves an access to the German market.

POST-WAR REVISION OF FRENCH POLICY

These measures against German trade were accompanied by a revision of French commercial policy. On April 23, 1918, the French Government announced its intention to denounce all of its most-favored-nation treaties. Thereafter it adopted a policy of negotiating agreements with various governments upon the bargaining basis. Generally speaking, these agreements attempted to obtain as many tariff favors as possible for French exports while giving as little as possible in return.

*This draft is printed in *Senate Hearings on the Treaty of Peace with Germany*, Senate Document No. 106, 66th Cong. 1st Session, 1919, p. 1209.

**Articles 264, 268, 269 and 280, Treaty of Versailles.

*Letter of President Wilson to Senator Simmons, October, 1918. Temperley, *History of the Peace Conference*, Vol. V, p. 60.

PAST AND PRESENT AMERICAN TARIFF POLICY

Between 1778 and 1923 the United States, while it did not actually enter into a large number of tariff conventions, went even further than most European nations in defending the principle of tariff bargaining. In 1854 and 1875 the United States made agreements with Canada and Hawaii, respectively, providing for the reciprocal reduction of duties on certain products. In several instances European Governments claimed the benefit of the concessions thus granted, under the most-favored-nation clause in their commercial treaties with the United States. But the latter government always declined to grant such demands on the ground that reciprocal commercial concessions were not gratuitous privileges, but were given only for a valuable consideration. In other words, the United States followed the policy of *conditional* most-favored-nation treatment, in contrast to most European powers who followed an *unconditional* policy of freely granting tariff benefits to every country with which it had a most-favored-nation commercial treaty.

The United States was the first government to advance the conditional interpretation.* Apparently it wished to use the instrument of tariff bargaining as a means of breaking down existing discriminations against American trade.

FOREIGN PROTESTS AGAINST DISCRIMINATORY POLICY

The American position was the object of protest of many foreign governments. The point of view of the British Government was stated in a note of February 12, 1885, which stated that the system sponsored by the United States "would lead countries to seek exclusive markets and would thus fetter instead of liberating trade. . . . Should the system contemplated by the United States be widely adopted, there will be a return to the old and exceedingly inconvenient system under which the same article in the same country would pay different duties varying according to its country of origin, the nationality of the importing ship, and perhaps at some future time, varying also with the nationality of the importer himself."**

*S. K. Hornbeck, *The Most Favored Nation Clause in Commercial Treaties*, Bulletin of the University of Wisconsin, 1910, No. 343, p. 13.

**J. B. Moore, *International Law Digest*, Vol. V, p. 271.

The McKinley Tariff of 1890 provided for a comprehensive system of tariff bargaining. It placed coffee, tea, hides, sugar and molasses on the free list but authorized the President to suspend the free admission of such products from countries which imposed unequal or unreasonable duties on products from the United States. Thus instead of authorizing the *reduction* of duties (an action which might injure American producers) this act authorized the imposition of penalties on countries which did not fix reasonable duties on American products. Under the authority of this act, the American Government negotiated ten reciprocity agreements with various countries in which the United States agreed to maintain the free list named in the act, in return for which the other party promised to admit free or at a low rate certain imports from the United States. When they failed to negotiate such an agreement the United States imposed penalty duties upon Colombia, Venezuela, and Haiti. Although Argentine and Mexico likewise refused to respond to our demands, we did not for some reason impose penalty duties upon their imports. This discrimination led to protests from Colombia and Venezuela.

PENALTY DUTIES UNDER THE DINGLEY TARIFF

The Dingley Tariff of 1897 similarly authorized the government to impose penalty duties on coffee, tea and hides when coming from countries which treated American products unequally or unreasonably. Hitherto the United States had admitted Brazilian products, chiefly rubber and coffee, free; but the Brazilian Government had imposed heavy duties upon American imports, the most important of which was wheat flour. Following the passage of the Dingley Act the United States threatened to impose a duty of three cents a pound on Brazil's coffee unless Brazil lowered her duties. As a result of this threat and of negotiations, the Brazilian Government lowered her duty on American flour twenty per cent below that imposed on flour from other countries. This reduction was made by the President of

Brazil despite the rejection of the proposal by the Brazilian Senate and the opposition of flour producers of other countries.*

This arrangement between the United States and Brazil continued in effect with amendments until 1923, when it was terminated by the United States for reasons later discussed.

The Dingley Act also authorized the President to reduce duties on a special list of articles, such as argols, wines and sugar, in return for similar concessions by other countries. Under this act, the United States negotiated agreements with France, Portugal, Spain, Bulgaria, Great Britain, the Netherlands, Germany and Italy, providing for the reciprocal reduction of duties. All of these agreements, however, were terminated by the Payne-Aldrich Act of 1909, which abandoned the principle of reciprocity in favor of penalty duties. The 1913 tariff law dropped these penalty duties but added a clause authorizing the President to negotiate reciprocal trade agreements subject to approval by Congress.

RECIPROCITY ABANDONED IN FORDNEY ACT OF 1922

The principle of reciprocity was finally abandoned in the Fordney-McCumber Act of 1922. Apparently protectionist sentiment did not wish to authorize the President to reduce duties even by agreement. But to supply him with a weapon against discrimination, Congress enacted section 317 of the act which provides that the President when he "finds that the public interest will be served thereby" shall impose additional duties up to 50 per cent, or even an embargo upon the product of any country which imposes upon American products "any unreasonable charge, exaction, regulation or limitation which is not equally enforced upon the like articles of every foreign country."

By 1923 discrimination against American trade, which the policy of conditional most-favored-nation treatment sought to overcome, had nearly disappeared. Moreover, the American Government had come to

believe that the policy of commercial bargaining had defects from the international standpoint, that the advantages of such agreements were not as great as had been supposed, and that, indeed, when the United States was not a party to such agreements they operated to exclude American trade from foreign markets. Consequently it abandoned the policy of commercial bargaining in favor of a policy of complete non-discrimination, or unconditional most-favored-nation treatment, with certain exceptions. Its first step in this direction was the termination of the preferential arrangement with Brazil.

In an exchange of notes of October 18, 1923 the two governments agreed to accord each other unconditional most-favored-nation treatment, with the exception of the special treatment accorded by the United States to its dependencies, to Cuba and the Panama Canal Zone.*

The notes stated that "every decrease of duty now accorded or which hereafter may be accorded by the United States or Brazil or by law, to the products of any third power will become immediately applicable without request and without compensation to the products of the United States and Brazil, respectively, on their importation into the other country."

In November, 1923, the State Department announced that it was taking steps to write the principle of unconditional most-favored-nation treatment in new treaties of commerce with the five countries of Central America and with other Latin-American countries. Pending the conclusion of such treaties, it was prepared to bring about reciprocal most-favored-nation treatment by an exchange of notes. By May, 1927 *modus vivendi* had been arranged with Haiti, Nicaragua, Guatemala, and the Dominion Republic in Latin America; and with Czechoslovakia, Greece, Poland, Finland, Latvia, Esthonia, Lithuania, Rumania and Turkey in Europe. The notes follow the wording and the reservations made in the Brazil notes.

*The only reciprocity agreement of the United States which remains in force today is with Cuba, made originally in December, 1902. This agreement provides for the reduction of 20 per cent of American duties on Cuban imports and from 20 to 60 per cent of Cuban duties on American goods.

*Reciprocity and Commercial Treaties, cited, p. 286.

In order to give the understanding arrived at in these notes a more permanent basis, the United States attempted to negotiate a number of commercial treaties embodying the principle of unconditional most-favored-nation treatment. This principle was first inserted in the ill-fated Treaty of Lausanne between the United States and Turkey, signed in August, 1923. The Treaty of Friendship and Commerce between Germany and the United States, signed December 8, 1924, recognized the principle as follows:

"Any advantage of whatsoever kind which either High Contracting Party may extend to any article, growth, produce, or manufac-

ture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article, the growth, produce or manufacture of the other High Contracting Party." (Art. VI).

Treaties embodying the same principle were also concluded with Esthonia and Hungary.

Thus, in 1923, the United States modified its commercial policy, and accepted the position which had been held by most European states, including France, before the World War.

FRANCO-AMERICAN TRADE RELATIONS AND THE NEW GERMAN TREATY

Although France had negotiated thirty-five most-favored-nation treaties with European countries before 1914, it did not enter into any such arrangement with the United States, following the termination of a convention of commerce in 1809.*

Despite this fact, the two governments have made a number of *ad hoc* agreements in regard to tariffs and trade. Under the tariff system established in France in 1892, the United States, a non-treaty state, could not claim the benefit of the French minimum duties. But when the American Government threatened to impose upon French imports the penalty duties authorized in the McKinley Tariff Act, France finally consented in an agreement of May 28, 1898** to give the United States the benefit of her minimum duties upon a limited number of products.

In return the United States agreed to impose moderate duties, stipulated in the treaty, on argols, brandies and paintings coming from France. Following the passage of the Dingley Act, which authorized the negotiation of reciprocal agreements, further negotiations were carried on which led to the signature of a reciprocity agreement on July 24, 1899. But the United States Senate, in which protectionist sentiment was strong, declined to approve of any agreement for the reduction of duties.

AMERICAN TRADE BASED ON FRENCH ACT OF 1910

Despite this failure to reach an agreement, the French Government did not apply the maximum rates on American goods. Following the termination of the 1892 agreement by the Tariff Act of 1909, the two governments again undertook negotiations. As a result the French Parliament in 1910 enacted a tariff law which provided for the admission into France, either free or at minimum rates, of practically all American products, with the exception of certain manufactured articles which at that time represented only 3.2 per cent of the total American exports to France.* The 1910 law also stated that the concessions granted in this law could be withdrawn in whole or in part by decree in case the United States should increase its duties on French products, or should grant more favored treatment to the commerce of another nation. This act of 1910 remains the legal basis of American trade with France today. But in the following years the amount of manufactures subjected to maximum duties steadily increased until in 1919 they constituted about 34 per cent in volume of the American imports into France.**

In order to increase its bargaining position the French Government in 1921 increased its maximum duties so that they were four

*Malloy *Treaties and Conventions of the United States*, p. 496. However, the treaty of April 30, 1803, ceding Louisiana to the United States, guaranteed France most-favored-nation treatment after twelve years in the Port of New Orleans. Malloy cited p. 510.

**Ibid, p. 542.

**Bulletin des Lois*, p. 748. Law of March 29, 1910.

**W. W. McClure. *A New American Commercial Policy*. Columbia Universities Studies, in History Economics and Public Law, Vol. XXIV, no. 2, p. 209.

times its minimum duties. But it did not apply the new schedules to imports from the United States. As a special concession it allowed American goods which had been subjected to maximum duties in the 1910 law to continue to enter under the old rates.*

Meanwhile France took further measures, which need not be discussed here, to increase the rate of duties fixed in the law of 1910, but which had actually declined because of the depreciation of the franc. In 1926 the French Parliament authorized increases in tariff rates 60 per cent. In August of that year the government introduced a tariff bill to consolidate the various amendments made since the war and to introduce some protectionist features. The principle upon which the bill was passed, similar to that followed in the American Tariff Act of 1922, was that the tariff should be utilized so as to equalize costs of production at home and abroad. The complexity of the bill will be realized from the fact that while the bill itself has only 29 articles, the tariff rates cover 400 pages, and separate duties are imposed on 8,000 different items. The documents containing the proposed law cover 868 pages.

While the French Parliament was unable to agree upon the provisions of the law be-

fore adjournment, it did authorize the government, in a law of July 13, 1927, to make certain modifications in the tariff rates for a period of three months—powers used following the signature of the recent Franco-German commercial treaty.

FRANCO-GERMAN NEGOTIATIONS OPENED IN 1924

Meanwhile the French Government had been pursuing its policy of negotiating commercial agreements upon the bargaining basis and without giving most-favored-nation treatment. While by November, 1926, it had negotiated about 20 commercial treaties, many of them were unimportant. The larger states in Europe apparently declined to enter a commercial agreement upon the French terms. As long as the unilateral provisions of the Treaty of Versailles remained in force, there was no reason why France should negotiate for a commercial agreement with Germany. But beginning in 1924 these provisions began to expire and on January 10, 1925, Germany's obligations to grant France most-favored-nation treatment came to an end.

The commercial situation, in regard to France and Germany, is shown by the following table:

	1925		1913
German imports from France	361,922,000	gold mks.	590,881,000 gold mks.
German exports to France	159,465,000		792,336,000
Total trade	521,387,000		1,383,217,000
		In hundred kilos	
German imports from France	15,476,362		54,760,176
German exports to France	19,173,578		88,725,958
Total trade	34,649,940*		143,486,134

*Statistisches Jahrbuch fuer das Deutsche Reich, 1926, p. 186.

As this table shows, Franco-German trade in 1925 was much less than in 1913. In order to increase this trade and particularly to obtain access to German coal and to the German market for French agricultural produce, France opened negotiations with Germany for a commercial agreement as early as October, 1924.

During the course of negotiations, Germany insisted upon the acceptance of the most-favored-nation treatment which France

was at first loath to grant. On February 12, 1926, a provisional agreement was finally signed which applied, however, only to the exports of French agricultural products of a perishable nature to Germany. On August 5, 1926, the two governments signed a more extensive provisional agreement, under which French vegetables, fruits, flour and grapes, among other products, were granted the right of most-favored-nation treatment in Germany; that is, they should receive the benefit of tariff rates already granted by

*Art. 2, Decree of March 28, 1921. *Journal Officiel de la République Française*, 1921, p. 4155.

Germany to Italy, Belgium and Spain. In return the French Government granted certain German products the benefit of her minimum tariff. This agreement did not apply, however, to any of the important exports, such as, in the case of the French, wine, iron, linen and cotton, and, in the case of the Germans, dyes and various manufactures. These products were still obliged to pay maximum duties.

COMMERCIAL TREATY SIGNED AUGUST 17, 1927

On June 30, 1927, this provisional arrangement came to an end, following which each country imposed its maximum tariffs upon imports from the other, with resulting hardship to various merchants and farmers and unsettling of the exchange. The situation was relieved by the signature on August 17, 1927, of a definitive treaty of commerce between France and Germany, which has been hailed as one of the most important steps toward economic peace and prosperity taken since the close of the World War.

In this agreement France grants about 280 German products, including foodstuffs, a small number of chemical products, automobiles, and musical instruments, the benefit of the present French minimum tariff.*

France also grants about 700 German goods the rates of new minimum duties which were established in the decree of August 31, 1927. The articles thus favored include a large number of chemical products, jewelry, electrical apparatus, instruments of precision and toys. Apparently the French Government did not wish to grant these products the benefit of the old minimum duty because it believed that this duty was not high enough to protect French industries.**

In return the German Government grants conventional duties to a large number of French products, including articles of food, silks, lace, and cloth.†

FURTHER PROVISIONS OF TREATY

Generally speaking, this treaty favors those industries in each country which stand in need of foreign markets. In Germany these are the chemical, electrical and machine industries; in France, agriculture and wines. But the export of French wines to Germany is limited to 360 metric quintals annually—which offsets the discriminations which France continues to maintain on certain German goods. This limitation will come to an end as soon as complete most-favored-nation treatment comes into effect. This treaty covers nearly all items which constitute the potential exports of France and Germany.

The majority of the rates granted Germany may not be modified during the life of the agreement, except in conformity with official index numbers of wholesale prices. But in case the French Parliament enacts a new tariff law it may change these rates. In that case, however, either party has the right to denounce the agreement within a month. If it is not denounced, France will grant the minimum rates of its tariff to all German exports, in exchange for which French products will enjoy *de jure* most-favored-nation treatment in Germany. Whether or not the French Parliament enacts a new tariff law, both parties agree, in case the convention is not denounced beforehand, to grant each other complete most-favored-nation treatment after December 15, 1928.*

In addition to the tariff clauses, the treaty contains a large number of provisions in regard to the method of collecting customs, octroi and other internal taxes. In conformity with recent conventions, concluded under the auspices of the League of Nations, the treaty also defines the status of persons and corporations in France and Germany, rules of maritime and river navigation, and German rights in regard to French railways and in the French colonies. Any dispute in regard to the application of the agreement

*These are listed in List A. annexed to the Agreement of August 17, 1927, *Journal Officiel de la République Française*, August 31, 1927, p. 9208.

**These are listed in List B.; List C. lists products subject to intermediary duties.

†List E. List F. gives the articles entitled to most-favored-nation treatment.

*Most-favored-nation treatment shall not, however, be extended to (1) advantages granted to neighboring (limitrophes) countries in a zone not to exceed 15 kilometers from the frontier, (2) advantages accorded to a third state with a view to evading double taxation; (3) to the special regime which France may wish to establish in regard to imports destined to facilitate financial arrangements with the countries which have been in a state of war with it during the years 1914 to 1918.

which cannot be settled amicably by diplomatic means will be settled in conformity with the Locarno arbitration convention of October 16, 1925, which provides for arbitration or reference to the Permanent Court of International Justice.

The grant of most-favored-nation treatment to Germany does not authorize Germany to demand the benefit of preferential advantages which France accords or may accord to its colonies, protectorates and mandates, or which the French colonies or protectorates accord or may accord to France. But in Tunis and the so-called non-assimilated colonies, that is, those having a special tariff régime, German products will benefit from the lowest duty granted to any other power. In the protocol of signature to the treaty, France agrees to recommend to the Moroccan Government that it grant Germany in the French Zone the principle of most-favored-nation treatment in regard to imports, passengers and shipping. Since the Sultan of Morocco is under French control this provision virtually insures Germany equal trading rights in this territory.

In a declaration annexed to the treaty, France renounces its right under the Treaty of Versailles to take economic and financial reprisals, which will restrict the free disposition of German private property "in case of voluntary default by Germany" in reparation payments. This declaration would seem to constitute an important revision, in principle, in the Treaty of Versailles.*

NEW FRENCH RATES AFFECT AMERICAN TRADE

While the conclusion of the Franco-German commercial treaty was generally welcomed in Europe** as marking an important step forward in the direction of economic disarmament, its after-effects were criticized in the United States because of alleged injury to American trade. These complaints arose out of the decree enacted by the French Government two weeks after the signature of the Franco-German treaty which increased the rate of minimum duties upon a large number of articles covered by List B

of the Franco-German treaty, and also applied the new maximum rates to a number of American goods not protected by the 1910 law, thus withdrawing the concession made in 1921. The effect of the decree, therefore, was not only to increase minimum duties upon certain German and American goods alike, but also to impose new maximum duties upon goods imported from the United States. As a result certain types of machinery and other goods coming from the United States must now pay four times the duty which the same machinery coming from Germany must pay.

It was estimated* that American shipments to France of an annual value of more than \$10,000,000 would be subject to the new maximum duties. This is about 4.2 per cent of the total American exports to France. Many American merchants believed that as a result of these duties American trade with France, particularly in machinery and electrical equipment, would decline and would be supplanted by German trade, thus aided by tariff concessions.† It should be pointed out, however, that the trade of other nations was also adversely affected by the treaty.

While the United States is entitled to receive the tariff benefits accorded by Germany to France because of the most-favored-nation proviso in the treaty of December 8, 1924, it is not entitled to benefit from the minimum rates France accords Germany because it has no most-favored-nation treaty with France.

UNITED STATES ENTERS PROTEST AGAINST NEW DUTIES

On September 7, the American Embassy in Paris protested against the imposition of these new duties upon American trade. It later presented a draft of a most-favored-nation treaty, the acceptance of which would result in extending the concessions made to German goods to American products. The treaty called upon France to lower her duties on American products.

*Henry Chalmers, "Effects of New French Duties on American Trade," *Commerce Reports*, U. S. Department of Commerce, September 19, 1927, p. 707.

†The American articles affected are as follows:

- (a) Articles which continue to pay old minimum duties include agricultural machinery, tractors, engines and motors, typewriters, locks, films, copper, etc.
- (b) Articles paying intermediate or new minimum duties include certain hides and skins, toys and vehicles.
- (c) Articles paying the new maximum duties include electrical equipment; heavy machinery; sewing machines; instruments of precision; hardware, chemicals; leather; textiles; earthenware and certain specialities.

*Paragraph 18 of Annex II of Part VIII.

**See editorials in the *Paris Temps*, August 19, 1927. *London Times*, August 19, 1927, and *Frankfurter Zeitung*, August 18, 1927.

FRANCE DEMANDS CONCESSIONS IN RETURN FOR FAVORED TREATMENT

On September 14, the French Government sent a note to the United States stating that the special concessions made to American goods in 1921, "was not in harmony with the constant increase in American tariffs and the reinforcement of customs barriers practised by America since that time to the detriment of certain specific products of the French trade." The French Government therefore wished to return to the position defined in the act of 1910. The French Government would be willing to negotiate a most-favored-nation treaty, but only on condition that the United States make concessions to France in the form of a reciprocity agreement. If the French Government were to receive a preliminary assurance to this effect, it would be disposed, in order to facilitate negotiations, to reduce at once by 50 per cent the maximum duties applied to American goods in the decree of August 30, 1927.*

In a note dated September 19 the United States replied that it "was both surprised and disappointed" at the French position. It had supposed that the French Government understood that the United States could not under its tariff law enter into any reciprocity arrangement.** It was the "profound belief of the American Government" that the only satisfactory basis of international trade relations "is to be found in the domain of equal treatment of all nations." Unless this principle of equality is admitted "there can be no confidence in the stability of trade relations and the beginning of such discriminatory action can only lead to its extension throughout the world, thus creating trade groups, combinations against weaker nations, reprisals and a long train of political and economic dangers." It pointed out that the principle of general most-favored-nation treatment was unanimously recommended at the Geneva Economic Conference.

*The English text of this correspondence was published in the *New York Times*, Oct. 4, 1927, the French text in *Le Temps* of the same date.

**The American note seems to overlook the constitutional possibility of making tariff reductions by treaty; whether or not such a treaty requires subsequent action by Congress in addition to the Senate's approval has been frequently discussed. Cf. C. K. Burdick, *The Law of the American Constitution*, New York, 1922, p. 72.

AMERICAN CRITICISM BASED ON FRENCH DISCRIMINATION

The American note did not criticize the height of the French rates; it objected only to the fact of discrimination between German and American goods. The United States did not believe that the mere fact that the average rate of duty of the American tariff was higher than the French rate justified France in discriminating against the United States. American rates applied equally to all. If the rates of duty on articles imported into the United States from France were proportionately higher than on those exported from the United States to France, the reason was merely that a large part of American imports consisted of manufactured articles and luxuries, while the American exports to France were largely raw materials. The higher duties in the present tariff law on French imports had not decreased the flow of French goods into the United States which had increased from \$141,885,000 in 1921 to \$152,030,000 in 1926. Moreover the United States did not complain of the fact that while it admitted about 95 per cent of the imports from Brazil free of duty, Brazil imposed duties on a large percentage of American goods.* France alone discriminated at the present time against American trade. Article 317 of the American Tariff gave the executive the right to impose additional duties under such circumstances. But the American Government had "so far" refrained from imposing these penalties because it believed the French Government would realize the essential justice of the American principle of non-discrimination.

THE FRENCH REPLY OF SEPT. 30

On September 30, the French Government replied that while the Economic Conference at Geneva had indorsed most-favored-nation treatment, it had also declared that excessive tariffs should be lowered by common agreement, through the negotiation of commercial treaties. Such a treaty the French Govern-

*The American note did not, however, state that the United States did protest against this state of affairs in 1898 and obliged Brazil to reduce its duties, an arrangement terminated only in 1923, Cf. p. 246.

ment now wished to negotiate with the United States, as she had just done with Germany. France would consider it a step backward if she should grant most-favored-nation treatment without taking into account the "protectionism of some countries and the liberalism of others." This would be a "miscarriage of justice." The French note then referred to the fact that the United States followed the reciprocity principle between 1778 and 1922. It intimated that the United States deserted the principle of reciprocity because protectionist interests were opposed to any tariff reduction by negotiation. In view of the necessity for monetary and economic restoration France could not be blamed for her desire to obtain contractual guarantees. This she must do in order to fulfill her "international engagements." "As the American experts were the first to say in the Dawes Plan, any country can only secure for itself possibilities of transfer by the sale of its goods,"—apparently a reference to the payment of the French debt to the United States. It was not fair for the United States to cite the trade increases between 1921 and 1926 since France in 1921 was still "bruised by the German devastation." Taking into account the world increase in prices, the exports of France to the United States had actually declined in 1926 in comparison with 1913. In the latter year French exports stood at \$136,877,990. While in 1926 they stood at \$152,030,000, this really represented a decrease; taking the change of price levels into consideration, French exports in 1926 should have stood at \$200,000,000 to equal the 1913 figure. This decline in actual trade was due, according to the French, to the "excessive elevation of American tariffs affecting the principal French product." The American duties on French goods were in most cases higher than the French maximum duties, which were four times the minimum duties. The note also contained a veiled criticism of the investigations of the American Tariff Commission and of embargoes imposed on certain imports into the United States by the Department of Agriculture for sanitary reasons.

FRANCE DECLARES AMERICAN LAW PERMITS CONCESSIONS

In closing, the French Government reiterated its position that France could grant to the United States most-favored-nation treatment only in case the United States would meet these requests. It would be unjust if France was required to give to the United States, whose high tariff injured French commerce, the same privileges as she gave to other countries which favored it. It suggested that under Section 315 of the United States tariff law the President could decrease duties on articles in order to equalize costs of production; and it seemed to imply that the American Government should utilize this provision to reduce duties on French products. The French Government could not fail to regret that the United States had threatened to impose penalties on French goods with "the still too recent memory of the struggle which the two governments had recently waged." The French surprise was increased by the fact that the actual trade affected by these rates was almost negligible.

In a later note, not made public, the French Government is reported to have stated that Article I of the Law of 1892, as well as an amendment of 1919, prevent their granting concessions except on a reciprocity basis.*

Thus, in this correspondence, the United States protested against "discrimination," while the French Government protested against excessive tariffs. France would grant minimum duties to the United States only in case the United States would lower its tariffs. The arguments which France used in support of this position were almost exactly those which the United States used in supporting the same policy between 1778 and 1922.

The French criticism of the United States is directed primarily against the heavy duties imposed on French goods in the Act of 1922. These duties, in comparison with those imposed in the Act of 1913, are as follows:

*Amendment of July 29, 1919, *Bulletin de Lois*, 1919, p. 2399. This Amendment provided that the Government might grant intermediate rates temporarily by Cabinet decree "in exchange for corresponding advantages."

AMERICAN TARIFF RATES ON FRENCH IMPORTS*

	1913	1922	Percentage of increase
Porcelain	50-55%	55-70%	10-27%
Cotton plush	40%	50%	25%
Upholstery fabrics	35%	45%	28%
Silk threads	35%	45%	28%
Sewing threads & floss silk	15%	40%	166%
Silk piece & fabrics	45%	55%	22%
Velvet & silk plush	50%	60%	20%
Tulle and silk lace	60%	90%	50%
Clothes: Silk	50%	60%	20%
Wool	35%	76%	117%
Silk & lace	60%	90%	50%
Jewelry or imitation	60%	80%	33%
Cutlery	30%	45% + 2-16c. ea.	over 50%
Perfumery, etc.: Alcoholic	60% + 40c. lb.	75% + 40c. lb.	25%
Non-Alcoholic	60%	75%	25%
Mushrooms	2½c. lb. (about 7%)	45%	543%
Wool yarns, etc.	18%	30-40% + 24-36c. lb.	76-110%
Wool fabrics	25-35%	50% + 37-45c. lb.	300-185%
Men's gloves	\$1-\$2.50 doz. pr.	\$5 per doz. pr.	400-100%

*From the Tariff Dictionary, U. S. Tariff Commission, 1922, p. 871-950.

IMPLICATIONS OF HIGH TARIFFS AND AMERICAN "FLEXIBLE" PROVISIONS

In the absence of treaty obligations, there does not seem to be any universally recognized principle in international law prohibiting a country from granting lower duties to one nation than to another. Similarly, there does not seem to be any recognized principle which prevents a state from imposing excessive customs duties. From the legal standpoint, tariffs are "domestic" questions.

While prior to 1914 European countries enforced comparatively moderate duties and granted unconditional most-favored-nation treatment, the chaotic economic conditions which arose out of the World War, accompanied by an intensified nationalism, led most European governments to increase their tariff duties. According to a recent study of the League of Nations Secretariat tariffs may be classified as follows:

1. Countries having a tariff index of more than 40%—Spain.
2. Countries having a tariff index of more than 25%—United States.

3. Countries having a tariff index between 20% and 25%—Argentina, Hungary, Poland, Kingdom of the Serbs, Croates and Slovenes.
4. Countries having tariff indexes between 15% and 20%—Australia, Canada, Czechoslovakia and Italy.
5. Countries having tariff indexes between 10% and 15%—Austria, France, Germany, India, Sweden and Switzerland.
6. Countries having a tariff index between 5% and 10%—Belgium, Denmark.
7. Countries having a tariff index of 5%—Netherlands, United Kingdom.*

While any such comparison must obviously be approximate, the conclusion that

**Tariff Level Indices.* Economic and Financial Section League of Nations International Economic Conference C. E. I. 37 (1927) p. 4, 12, 16. Two systems of measurement were employed in estimating these levels. Under the first method, "a list of 78 commodities (or group of commodities) has been compiled and the average import value of each commodity (or group of commodities) in the country whose tariff it was intended to measure, has been ascertained. The tariff rate applicable to each commodity (or group of commodities) was then calculated and expressed as a percentage of the price. Thus, all specific duties were converted into *ad valorem* duties. The unweighted arithmetic mean of the percentages was then calculated." The term "Tariff level" was defined as "a magnitude which is equal to the average of the percentages which the duties imposed by any given country constitute of the value of the commodities which go to compose the whole catena of goods normally entering into international trade."

the United States has, next to Spain, the highest tariff in the world seems to be well established. This does not necessarily indicate, however, that the American tariff is more restrictive than other tariffs, because of the superior purchasing power of the American people.

PROTESTS AGAINST AMERICAN HIGH TARIFF

The high tariff policy of the United States has brought forth frequent protests of foreign nations who have believed that this policy injured their trade. Following the passage of the Dingley Tariff Act of 1897, which imposed almost prohibitive duties upon many imports coming from Canada, the Canadian parliament passed a law lowering duties on imports from within the British Empire, but maintaining high duties against the United States.* This action marked the beginning of the system of Imperial Preference.

During the economic depression which followed the World War, Congress enacted the Emergency Tariff of 1921, which imposed heavy duties on wheat, corn, meat, wool and sugar, most of which had been placed on the free list in the Act of 1913. When this bill was pending, a number of governments and foreign commercial interests made representations to the United States that the enactment of these duties would seriously injure industries in their countries which rested upon American trade. Apparently to show its displeasure, the Argentina Government cancelled the American National Exposition which was to have been held in March, 1921, at Buenos Aires, while the Prime Minister of Newfoundland went to Washington in the fall of 1921 to inform the Senate Finance Committee that the duties contemplated in the Emergency Tariff would completely destroy the Newfoundland herring industry.**

In 1922, a Republican Congress adopted a permanent tariff, the Fordney-McCumber Act, which was especially aimed to protect the United States against exports from countries having a depreciated rate of ex-

change. In the first place this act imposed higher rates than any previous tariff act in the history of the United States.*

In the second place Section 315 of this act authorized the President, upon the recommendation of the Tariff Commission, to raise or lower duties not to exceed 50 per cent to equalize costs of production on articles produced abroad and in the United States—the so-called “flexible” feature. In the third place, Section 317 authorized the imposition of penalty duties in retaliation for any discrimination against the United States.

The high duties imposed by the Act of 1922 led to complaints from Swedish, Dutch, British and many other foreign interests. Spain and Italy were particularly irritated by the imposition of high duties on olive oil and walnuts, for the purpose of protecting a few congressional districts in California, which cannot, however, supply more than a very small percentage of the American demand. In 1923, Canada cancelled a *modus vivendi* with the United States which had existed since 1888 by which American fishing vessels had been granted licenses to use Canadian ports to discharge cargoes and obtain bait. It was stated that this action was taken in retaliation for the high tariff imposed in the 1922 act on halibut coming from Canada.**

THE “FLEXIBLE” PROVISIONS OF THE FORDNEY ACT

While Section 317 of the Tariff Act authorizing retaliation has never been employed, Section 315 equalizing costs of production through the tariff has frequently been utilized. Any importer or manufacturer may request the Tariff Commission to recommend a change in rates for this purpose. If the Commission decides that there is some basis for the request, it undertakes an investigation of the costs of production of the article concerned. It has no power, however, to coerce producers to show their books. Practically all of these

*See remarks of Hon. W. S. Fielding, Minister of Finance, Canadian House of Commons Debates, April 22, 1897.

**These protests are summarized in Chapter X of Rosalie Jones. *The American Standard of Living*, New York, 1923.

*Taussig, F. W., *Tariff History of the United States*, 7th ed. 1922, New York, p. 453.

**N. Y. Times, May 26, 1923.

investigations take place in foreign countries. Up to May, 1927, 561 applications were filed with the Commission for changes in rates. So far sixty-three investigations have been instituted by the Commission and twenty-three reports have been completed and sent to the President. In fourteen cases the President has increased the rate of duty; and in four cases he has lowered it—in the case of live bob-white quail, paint brush handles, millfeeds and cresylic acid.

DIFFICULTIES OF INVESTIGATING PRODUCTION COSTS

These "flexible" provisions of the Act of 1922 have frequently been criticised. Professor F. W. Taussig, former chairman of the Commission, states:

"The notion of equalizing costs of production had become a sort of fetish among the protectionists. It is difficult enough to ascertain costs of production in the United States. But can it be imagined that any officials in the United States could do this sort of thing for foreign products? That foreign producers would permit such a control of their accounts and figures as alone would make it possible to ascertain trustworthy comparable figures for the competitive articles in foreign countries. . . . A biased or subservient Tariff Commission might make a pretense of having found accurate figures. A basis of well-ascertained fact is almost impossible to find, or if found, to keep up to date. Those who advocated this as a "scientific" solution of the tariff question were obsessed by formula and surprisingly unable to face the realities..""

In a recent address, Dr. A. L. P. Dennis, a member of the Tariff Commission, stated:

"If the matter of obtaining production costs is a difficult thing at home where our accountants are working with the co-operation of the producers, how about the difficulties of obtaining production costs abroad, when we are working uphill against the prejudice, the opposition, the suspicion of the foreigner who knows nine times out of ten that your real objective is against his interest and that what you are after is an increase in tariff on his goods. . . ?""

Dr. Dennis added that the French Government looked with great disfavor upon the admission of our cost accountants into France, particularly as that Government did not ask the right to investigate the books of French producers itself.

German producers have withheld their cost data from the Tariff Commission in the case of cresylic acid. Manufacturers in Scandinavia, Germany and France have likewise declined to reveal costs of production in the case of potassium chlorate.* In 1925 two members of the Commission proceeded to Europe in an attempt to remove opposition to the Commissions' efforts to obtain data.†

Manufacturers of sodium nitrite in both Norway and Germany declined to give the commission's investigators access to their books. Other protests have been made to the government in regard to wheat, wheat flour, barium dioxide, oxalic acid and men's straw hats.‡

It is understood that the delay in negotiating a commercial agreement between Spain and the United States has been due to Spanish objections to the proposed investigation of the cost of production of Spanish onions.

In October, 1927, the Argentina ambassador at Washington protested against the visit of investigators from the Tariff Commission for the purpose of studying costs of production of flax seed and corn. As a result of this protest, the Commission decided not to send the mission.

One company has challenged the constitutionality of the whole of Section 315, and the question is now before the Supreme Court.

On the other hand, Dr. Brossard, a Republican member of the Tariff Commission, declared upon returning from an investigation of production costs in twelve countries in Europe that he had received hearty cooperation from industrialists and governments. He declared, "By a process of education and experience the Tariff Commission is gradually breaking down the opposition to its scientific work. . . .""

International irritation also has been caused to a certain extent by the imposition of embargoes on a number of imports on the ground that they are dangerous from the standpoint of sanitation. Thus

**Eighth Annual Report of the United States Tariff Commission*, 1924. pp. 15-18.

†*Tenth Annual Report of the United States Tariff Commission*, 1926. p. 16.

‡*Ibid.*, p. 19.

‡‡*New York Times*, September 19, 1927, p. 16.

*F. W. Taussig, *The Tariff History of the United States*, p. 480.

***Manufacturers' Association Bulletin*, June, 1927. p. 69.

embargoes have been imposed on tomato paste from Italy*, Dutch tulips, Spanish grapes, and Argentina cattle. In many cases these embargoes operate to protect American produce. Many foreigners and some American officials believe that the danger from these imports is more hypothetical than real and that they have really been imposed as protective measures. But the Department of Agriculture vigorously denies any such imputation. On October 5, 1927, Secretary Jardine stated that "when folks say we are enforcing them for commercial purposes, they don't know what they are talking about." He declared that the country suffered a loss of \$2,000,000,000 a year from injurious insects and pests; and that the United States was less severe in the matter of quarantines than other countries, notably France.**

REVISION OF THE FORDNEY ACT?

In a recent editorial the New York *Herald-Tribune*, a leading Republican newspaper, declared, "The 1922 tariff act was in origin and construction largely an emergency measure Congress sought to prevent the swamping of our markets with goods artificially cheapened through the depreciation of foreign currencies. . . . The atmosphere then was charged with pessimism and apprehension. The Fordney-McCumber act was self-defensive in an extreme sense. It was concerned almost exclusively with preservation of the American market so long as economic disorder continued. It has left us in a position where we have little or nothing to concede and must rely mainly on reprisals or threats of reprisals for equal treatment abroad.

"The French difficulty . . . raises the broader question whether the emergency at the end of the war has not been materially altered and whether our defensive strategy of 1922 cannot now be modified Why make the present regime permanent? With currencies stabilized abroad and trade and production restored, there is no such urgent call as there used to be

for emergency retaliation. . . . The United States is able to protect its interests; but is it worth while to conduct all our tariff dealings with other nations on the exaggerated emergency basis of 1922?"*

The above criticisms of the American tariff system have been reviewed not with a view to determining whether they are just or unjust, but simply to point out that while American interests have recently been irritated by the French tariff, other interests, probably greater in scope, have frequently been irritated by the American tariff.

INTERNATIONAL DECLARATIONS ON DISCRIMINATION AND HIGH TARIFFS

With recent years a number of important international declarations, official and unofficial, have been made in favor of (1) the principle of non-discrimination, (2) the principle of moderate tariffs. In 1920 the Brussels Financial Conference urged a return to "that freedom of commerce which prevailed before war."

In April, 1927, the Trade Barriers Committee of the International Chamber of Commerce declared:

"Whereas excessive customs duties, the instability and constant increases in customs tariffs constitute the most serious barriers to international trade. . . the Trade Barriers Committee recommends cooperation, ever more vigorous and fruitful, between the nations to arrive at increasingly close relations by means of commercial treaties and Customs conventions and the application of the principle of the most favored clause. . . ."

On October 19, 1926, 165 leading bankers and industrialists of fifteen different countries, including the United States, issued a manifesto in which they declared:

"It is difficult to view without dismay the extent to which tariff barriers, special licenses and prohibitions since the war have been allowed to interfere with international trade and to prevent it from flowing to its natural channels. . . . There can be no recovery in Europe till politicians in all territories, old and new, realize that trade is not war but a process of exchange, that in time of peace our neighbors are our customers and that their prosperity is a condition of our own well-being. If we check their dealings their power to pay their debts diminishes and their

*This embargo was later removed.

**New York Times, October 6, 1927, p. 7.

*"Emergency Tariff Legacies," New York *Herald Tribune*, October 7, 1927.

**Final Report of the Trade Barriers Committee of the International Chamber of Commerce, League of Nations. C. E. 1. 5 (1). p. 32.

power to purchase our goods is reduced. Restricted imports involve restricted exports, and no nation can afford to lose its export trade. Dependent as we all are upon imports and exports, and upon the processes of international exchange, we cannot view without grave concern a policy which means the impoverishment of Europe."

At the World Economic Conference held at Geneva in April, 1927, which was attended by representatives from fifty states, including the United States, a resolution was unanimously passed stating that "the time has come to put a stop to the growth of Customs tariff."*

From these various resolutions it would seem that as much emphasis has been placed upon the principle of moderate tariffs as upon the principle of discriminations.

BROADER ASPECTS OF THE TARIFF ISSUE

While the United States has attempted to reduce the Franco-American tariff difficulty to a simple question of discrimination, many European observers have drawn attention to its broader aspects. It would appear that in Europe there is a good deal of sentiment in favor of the acceptance of the twin principles of unconditional most-favored-nation treatment and of moderate tariffs. Many Europeans have argued that the United States, while threatening to retaliate against nations not giving her the

*The text of the full resolution is printed below.

benefit of the first principle, is unwilling to admit the virtue of the second.

Under the Dawes plan the full annuities which Germany must pay to France and other nations do not fall due until 1928-29 and there already have been many expressions of opinion that unless German foreign trade greatly expands, Germany will not be able to transfer the credits due to Allied governments. The negotiation of the Franco-German trade agreement paves the way for such trade expansion. But some European merchants and statesmen feel that the real economic recovery of Europe upon which the payment of reparations and the Inter-Allied debts depends can only follow trade increases with the United States. Despite the existence of large "invisible" items, the belief is widely held that Europe cannot meet interest payments on American investments and pay for American raw materials and other produce upon which they depend, without exporting in return large quantities of goods to the United States. European opinion also believes that the expansion of exports to the United States is seriously hindered by the height of the American duties. In taking the lead in criticising the height of these duties and declining to grant the United States equal access to French markets until she lowers them, as other governments are doing, the French Government seems to be regarded as the spokesman for Europe in a controversy which may be revived in the future.

APPENDIX

CONCLUSIONS OF THE WORLD ECONOMIC CONFERENCE*

III. COMMERCIAL POLICY AND TREATIES

The main conclusion to be drawn from the work of the Conference in the field of commercial policy is that the time has come to put a stop to the growth of Customs tariffs, and to reverse the direction of the movement by an effort made along three lines, viz.:

- (1) Individual action by States with regard to their own tariffs;
- (2) Bilateral action through the conclusion of suitable commercial treaties;
- (3) Collective action, by means of an enquiry, with a view to encouraging the expansion of international trade on an equitable basis by removing or lowering the barriers to international trade which are set up by excessive Customs tariffs.

With the question of import duties is bound up

the question of the fiscal burdens which are sometimes imposed in addition, and which, in the Conference's opinion, should not aim at providing disguised protection for national production.

In a similar connection, the Conference is anxious that the free circulation of raw materials and articles of consumption should not be unduly hindered by export duties, and that such duties, whether levied to meet fiscal needs or exceptional or compelling circumstances, should not discriminate between different foreign countries.

Lastly, commercial treaties should contain the unconditional most-favored-nation clause in its broadest and most liberal form, and the League of Nations is recommended to consider the possibility

*League of Nations. *The World Economic Conference, Final Report.* n. 27-30.

of establishing clear and uniform principles in regard to that clause and introducing common rules relating to commercial treaties.

1. TARIFF LEVELS

Present Tariff Situation

The evidence before the Conference, which is contained in the documentation or in the statements made by the members of the Conference, shows that the recovery from the effects of the war has been unduly delayed and that the foreign commerce of all nations is in greater or less degree seriously hampered by existing obstacles to trade.

The Conference notes with satisfaction that some of the more injurious forms of obstruction that prevailed immediately after the war have been removed. To this fact must be attributed in part the recovery of world trade which has so far been achieved.

Tariffs, on the other hand, which in recent years have shown a tendency to rise, are for the most part higher than before the war, and are at present one of the chief barriers to trade. The increase in most countries is almost wholly due to higher duties on manufactured articles.

In Europe, the problem has been complicated by political readjustments which have changed many frontiers and increased the number of separate Customs units from 20 to 27, all of which strive for an independent national economy which they defend by means of tariff barriers.

The harmful effect of these tariffs upon trade has in many cases been increased through their constant changes, which have created an element of uncertainty and made it impossible to place long contracts. The nations have failed to deal with this situation by long-term treaties.

Causes

This state of affairs is largely due to a desire to meet the abnormal conditions arising out of the war. For example, many duties have been raised as a protection against an influx of goods from countries with a depreciating currency. Experience has proved that even the most rapid manipulation of tariffs is not an effective method of dealing with the still more rapid changes which are caused by monetary instability. Such attempts are a source of new difficulties for commerce and are themselves a source of uncertainty. Again, in the countries themselves whose currency has been depreciating, tariffs have been raised in order to check imports in the hope of stopping the depreciation. Finally, it has sometimes happened that, where depreciation has been followed by appreciation, Customs duties payable in paper money which had been raised during the inflation have not been correspondingly reduced when revalorisation occurred. These unstable currency conditions have to a considerable extent passed away; but the tariff and other measures which have been specially em-

ployed to deal with them have not yet wholly disappeared.

A second reason for the present tariff situation both in Europe and elsewhere is the desire of nations by means of tariffs to keep existing or recently established industries in being by means of tariffs on a scale which they would not otherwise be able to maintain. These industries have grown to their present extent, in some cases as a result of abnormal expansion during the war, in others as a result of the desire of certain nations to attain a degree of economic independence which is not justified by their slender resources, and again in others with a view to providing employment for surplus labor for which certain former outlets are at present closed.

This increase in productive capacity has often outrun the capacity of the country to absorb the products either as regards its material needs or its purchasing power. The result has been either that the plant left idle has overweighted the costs of production, particularly when borrowed capital is involved, or that, in order to utilize the whole plant and to give some return to the capital employed, it has been necessary to turn to the foreign market and so to intensify international competition.

The desire to deal with the problem of excessive industrial capacity has usually led to an attempt to reserve the home market for home production by means of tariff barriers erected with a view to creating an independent national economy capable of producing, under the protection of the tariff wall, an increase of invested wealth and a more satisfactory return for the work of the nation. This effort to attain self-sufficiency cannot hope to succeed unless it is justified by the size, natural resources, economic advantages and geographical situation of a country. There are very few countries in the world which can hope to attain it. The artificial increase of plant which is only partly employed has meant not only uneconomical and costly production but also a wasteful use of the world's reduced capital resources. It has thus been one of the causes which has maintained an abnormally high rate of interest in recent years. It should be added that, so long as unduly high tariffs are maintained, this uneconomic use of capital continues and creates an increasing number of vested interests which resist a return to a sounder policy.

High tariffs of whatever system have, in many cases, also been imposed, in the first instance at all events, for bargaining purposes. But subsequent negotiations have in practice not resulted in adequate modifications, with the consequence that the Customs barriers have been left higher than before.

This evil has become accentuated in recent years by the post-war practice of enforcing the exaggerated rates of *tarifs de combat*, whether under the autonomous or any other system, even in advance of negotiations, with the result that vested interests have frequently grown up in the meantime which have made impossible the contemplated reductions.

In addition to arguments connected with tariff negotiations, budgetary considerations are frequently brought forward to justify very high tariffs. But a country's budgetary equilibrium rests on a very precarious foundation if it is founded on high rates of duty the effect of which is to diminish imports and consequently the Customs revenue resulting from them. Moreover, the smuggling encouraged by excessive duties has a demoralizing effect.

A reason which has frequently been invoked in many cases to justify exaggerated post-war tariffs is the need of protecting industries required for national defense. But it cannot be denied that this argument, whatever its merits may be in principle, has often been abused to cover exclusively economic objectives.

Finally, the problem of population has induced certain countries which have a surplus of labor to base their Customs protection on this argument.

Discussion of Commercial Policy

In enumerating the causes and ideas which are responsible for the super-protectionism of post-war years, the International Economic Conference does not attempt to pass judgment on the fundamental principles of protection and free trade respectively.

In contrast to ideas which have led nations into a situation which is equally harmful to their own economic life and to their international economic relations, it remains to set out the considerations which demand a return to a general policy of freer international commerce.

It is too often overlooked that the attempt to stimulate artificially industries which would not otherwise flourish in a country may check the development of those activities for which it is most naturally suited. Nations may determine, for political or other reasons, that it is essential to their safety to develop increased self-sufficiency, but it is appropriate for the Conference to point out that this has in most cases involved a sacrifice of material prosperity. In such cases, the loss is borne by consumers, who have to pay more for the products of the protected industry, and by those engaged in the industries that would otherwise have a larger possibility of export.

In analyzing European commercial practices, it may be observed that the advocates of exaggerated protection have often made the mistake of imagining that it is always more advantageous to hinder imports than to increase exports; it may be observed that, if exports increase, production and national income are increased in a similar proportion; if, on the other hand, imports fall on account of tariff duties, the rise in the level of commodity prices reduces not only the possibility of export but also the consuming capacity of the country. A part only of the imports excluded by the Customs duties is replaced by home production. Excessive protection, which reduces national production and purchasing power, in the end defeats its own object. In some cases excessive import duties, by permitting very high profits to be realized at home, give an

uneconomic stimulus to exports, thus creating artificial competition on foreign markets. This practice is one of the most dangerous causes of market disorganization and of economic conflicts between nations.

Such are some of the principal illusions and most dangerous practices which have impoverished certain nations or hindered their economic reconstruction.

The Conference recognizes that the removal or substantial reduction of Customs barriers cannot be brought about suddenly without causing dislocation, but it is of opinion that governments should immediately prepare plans for removing or diminishing by successive stages those barriers that gravely hamper trade, starting with those duties which have been imposed to counteract the effect of disturbances that are now past.

The Conference believes that, if the true results of the present system now prevalent in Europe were understood by public opinion, it would be possible for governments to commence this process forthwith.

It is, however, clear that the process will be hastened if it can be carried out as a result of concerted action among States.

This is why the Conference is of opinion that it should make provision in its resolutions, not merely for the encouragement of bilateral agreements as nearly as possible in keeping with its doctrines, but also for the methodical examination, by the Economic Organization of the League of Nations, of common measures which might be adopted, in the matter of tariffs, by States Members of the League and by States non-members, and also of the mutual agreements at which these States might arrive.

Although the considerations outlined above with regard to tariff levels are based on a study of the question more particularly from the point of view of industry and commerce, they may be regarded as applying also, to an extent varying according to the country and purpose in view, to agriculture.

Conclusion

In view of the fact that harmful effects upon production and trade result from the high and constantly changing tariffs which are applied in many countries;

And since substantial improvement in the economic conditions can be obtained by increased facilities for international trade and commerce;

And in view of the fact that tariffs, though within the sovereign jurisdiction of the separate States, are not a matter of purely domestic interest but greatly influence the trade of the world;

And in view of the fact that some of the causes which have resulted in the increase of tariffs and in other trade barriers since the war have largely disappeared and others are diminishing;

The Conference declares that the time has come to put an end to the increase in tariffs and to move in the opposite direction.

The Conference recommends:

(1) That nations should take steps forthwith to remove or diminish those tariff barriers that gravely hamper trade, starting with those which have been imposed to counteract the effects of disturbances arising out of the war.

Moreover, in order to ensure that this action is continuously pursued, the Conference recommends:

(2) That States should proceed to the conclusion of commercial treaties on lines and under conditions calculated to ensure the attainment of the aims mentioned herein;

(3) That, in future, the practice of putting into force, in advance of negotiations, excessive duties established for the purpose of bargaining, whether by means of *tarifs de combat* or by means of general tariffs, should be abandoned;

(4) That the Council of the League of Nations should be requested to instruct its Economic Or-

ganization to examine, on the basis of the principles enunciated by the present Conference, the possibility of further action by the respective States with a view to promoting the equitable treatment of commerce by eliminating or reducing the obstructions which excessive Customs tariffs offer to international trade.

In this enquiry, the Economic Organization should consult with representatives of the various governments, including non-members of the League, and also so far as necessary with the competent bodies representing Commerce, Industry, Agriculture and Labor.

The object of the enquiry should be to encourage the extension of international trade on an equitable basis, while at the same time paying due regard to the just interests of producers and workers in obtaining a fair remuneration and of consumers in increasing their purchasing power.

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